



29 JAN 2004

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In re Application of
AFFOLTER, et al.
U.S. Application No.: 09/936,367
PCT No.: PCT/EP00/01796
Int. Filing Date: 02 March 2000
Priority Date: 11 March 1999
Attorney Docket No.: 112843-029
For: EXPRESSION OF PROTEOLYTIC
ENZYMES IN KOJI MOLD IN THE
PRESENCE OF CARBON SOURCES

DECISION ON PETITIONS
UNDER 37 CFR 1.181
AND 1.137(b)

This decision is in response to applicant's correspondence filed 31 July 2003 which is being treated as a petition under 37 CFR 1.181 and "Petition For Revival of an Application For Patent Abandoned Unintentionally Under 37 CFR 1.137(b)" filed 22 January 2004. No petition fee is due for the petition under 37 CFR 1.181. Applicant included authorization to charge the \$1330.00 petition to revive fee to Deposit Account No. 02-1818.

BACKGROUND

On 02 March 2000, applicant filed international application PCT/EP00/01796, which claimed priority of an earlier application filed 11 March 1999. A Demand for international preliminary examination, in which the United States was elected was filed prior to the expiration of nineteen months from the priority date. Accordingly, the thirty-month period for paying the basic national fee in the United States expired at midnight on 11 September 2001.

On 11 September 2001, applicant filed a transmittal letter for entry into the national stage in the United States, which was accompanied by the requisite basic national fee as required by 35 U.S.C. 371(c)(1); an unexecuted declaration; a copy of the international search report and a First preliminary amendment.

On 30 October 2001, applicant was mailed a "NOTIFICATION OF MISSING REQUIREMENTS UNDER 35 U.S.C. 371" (Form PCT/DO/EO/905) informing applicant of the need to provide an executed oath or declaration of the inventors, in compliance with 37 CFR 1.497(a) and (b), identifying the application by the International application number and international filing date. Applicant was also informed of the need to provide a nucleotide and/or amino acid sequence disclosure in compliance with 37 CFR 1.821-1.825. Applicant was afforded two months to file the response.

On 23 January 2002, applicant responded with an executed combined declaration and power of attorney.

On 30 May 2002, the present application became abandoned as to the United States for failure to fully respond to the Form PCT/DO/EO/905 mailed 30 October 2001.

On 31 July 2003, applicant filed copies of papers purportedly filed 28 March 2003 including a paper sequence listing and diskette for the present application.

On 22 January 2004, applicant filed the present petition to revive pursuant to 37 CFR 1.137(b).

DISCUSSION

I. Petition Under 37 CFR 1.181

The best evidence of what was actually received by the Office is a postcard receipt containing a specific itemization of all the items being submitted. See MPEP 503. Applicant's 31 July 2003 filing includes a copy of a date-stamped postcard receipt. The postcard identifies the application by applicant, application number and docket number. Among the items listed on the receipt are: "6. Sequence Listing Statement (1 page); 7. Sequence Listing Document (3 pages); and 8. Diskette Containing Computer Readable Form of Sequence Listing (1 diskette)" The receipt is stamped "DT13 Rec'd PCT/PTO 28 MAR 2003." Thus, it is clear that applicant filed these items on 28 March 2003. As such, it is proper to accept the papers filed on 31 July 2003 as having been filed 28 March 2003. Thus, it is proper to grant applicant's petition under 37 CFR 1.181.

II. Petition Under 37 CFR 1.137(b)

A petition under 37 CFR 1.137(b) requesting that the application be revived on the grounds of unintentional abandonment must be accompanied by (1) the required reply, (2) the petition fee required by law, (3) a statement that the, "entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to this paragraph was unintentional" and (4) any terminal disclaimer and fee pursuant to 37 CFR 1.137(c) (where required).

With regard to Item (2), applicant included authorization to charge the \$1330.00 petition fee to Deposit Account No.: 02-1818.

As to Item (3), applicant's statement that "the entire delay in filing the required reply from the due date for the required reply until the filing of a grantable petition under 37 CFR 1.137(b) was unintentional" satisfies Item (3).

With regard to Item (4), the terminal disclaimer is not required since this application was filed after 08 June 1995.

Thus, applicant has satisfied Items (2) - (4) above.

However, with regard to Item (1), the proper response was the required sequence listing pursuant to 37 CFR 1.821-1.825. The computer readable form filed 31 July 2003 (held to have been filed 28 March 2003 per the above) was found to be non-compliant and a corrected diskette is needed. (See attached copy of CRF Problem Report.) Accordingly, the proper reply has not been furnished.

For the reasons stated above, the petition for revival cannot be granted at this time and the application remains abandoned.

CONCLUSION

Applicant's petition under 37 CFR 1.181 is GRANTED.

Applicant's petition under 37 CFR 1.137(b) is DISMISSED.

This application remains abandoned as to the United States of America.

If reconsideration on the merits of this petition is desired, a proper response must be filed within **TWO (2) MONTHS** from the mail date of this decision. Any reconsideration request should include a cover letter entitled "Renewed Petition Under 37 CFR 1.137(b)." No additional petition fee is required.

Please direct further correspondence with respect to this matter to the Mail Stop PCT, Commissioner for Patents, Office of PCT Legal Administration, P.O. Box 1450, Alexandria, Virginia 22313-1450, with the contents of the letter marked to the attention of the Office of PCT Legal Administration.



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Office of PCT Legal Administration
Tel: (703) 305-0130
Fax: (703) 308-6459

#7

CRF Errors Edited by the STIC Systems Branch

Serial Number: 09/936,367

CRF Edit Date: 12/11/03
Edited by: AC

ENTERED

Kealigned nucleic acid/amino acid numbers/text in cases where the sequence text "wrapped" to the next line

Corrected the SEQ ID NO. Sequence numbers edited were:

Inserted or corrected a nucleic number at the end of a nucleic line. SEQ ID NO's edited:

Deleted: / invalid beginning/end-of-file text ; / page numbers

Inserted mandatory headings/numeric identifiers, specifically:

Moved responses to same line as heading/numeric identifier, specifically:

Other:



PCT

RAW SEQUENCE LISTING

PATENT APPLICATION: US/09/936,367

DATE: 12/11/2003

TIME: 11:17:12

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PATENT APPLICATION: US/09/936,367

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VERIFICATION SUMMARY

PATENT APPLICATION: US/09/936,367

DATE: 12/11/2003

TIME: 11:17:13

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L:9 M:270 C: Current Application Number differs, Replaced Application Number

L:10 M:271 C: Current Filing Date differs, Replaced Current Filing Date



PCT

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Does Not Comply
Corrected Diskette Needed

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 99 <211> LENGTH: 431
 100 <212> TYPE: PRT
 101 <213> ORGANISM: Aspergillus oryzae
 103 <400> SEQUENCE: 2
 104 Met Pro Pro Pro Ala Ser Ser Val Asp Phe Thr Asn Leu Leu Asn Pro

RAW SEQUENCE LISTING

PATENT APPLICATION: US/09/936,367

DATE: 12/11/2003

TIME: 11:13:11

Input Set : A:\PTO.AMC.txt

Output Set: N:\CRF4\12082003\I936367.raw

105	1	5	10	15												
107	Gln	Asn	Asn	Glu	Thr	Gly	Ser	Ala	Pro	Ser	Thr	Pro	Val	Asp	Ser	Ser
108					20				25					30		
110	Lys	Ala	Pro	Ser	Thr	Pro	Ser	Ser	Thr	Gln	Ser	Asn	Ser	Thr	Met	Ala
111					35				40					45		
113	Ser	Ser	Val	Ser	Leu	Leu	Pro	Pro	Leu	Met	Lys	Gly	Ala	Arg	Pro	Ala
114					50				55					60		
116	Thr	Glu	Glu	Ala	Arg	Gln	Asp	Leu	Pro	Arg	Pro	Tyr	Lys	Cys	Pro	Leu
117		65				70				75					80	
119	Cys	Asp	Arg	Ala	Phe	His	Arg	Leu	Glu	His	Gln	Thr	Arg	His	Ile	Arg
120						85				90					95	
122	Thr	His	Thr	Gly	Glu	Lys	Pro	His	Ala	Cys	Gln	Phe	Pro	Gly	Cys	Thr
123					100				105					110		
125	Lys	Arg	Phe	Ser	Arg	Ser	Asp	Glu	Leu	Thr	Arg	His	Ser	Arg	Ile	His
126					115				120					125		
128	Asn	Asn	Pro	Asn	Ser	Arg	Arg	Ser	Asn	Lys	Ala	His	Leu	Ala	Ala	Ala
129					130				135					140		
131	Ala	Ala	Ala	Ala	Ala	Gly	Gln	Gly	Gln	Glu	Asn	Ala	Met	Val	Asn	
132		145				150				155					160	
134	Val	Thr	Asn	Ala	Gly	Ser	Leu	Met	Pro	Pro	Pro	Thr	Lys	Pro	Met	Thr
135					165				170					175		
137	Arg	Ser	Ala	Pro	Val	Ser	Gln	Val	Gly	Ser	Pro	Asp	Val	Ser	Pro	Pro
138					180				185					190		
140	His	Ser	Phe	Ser	Asn	Tyr	Ala	Gly	His	Met	Arg	Ser	Asn	Leu	Gly	Pro
141			195			200				205						
143	Tyr	Ala	Arg	Asn	Thr	Glu	Arg	Ala	Ser	Ser	Gly	Met	Asp	Ile	Asn	Leu
144			210			215				220						
146	Leu	Ala	Thr	Ala	Ala	Ser	Gln	Val	Glu	Arg	Asp	Glu	Gln	His	Phe	Gly
147		225				230				235					240	
149	Phe	His	Ala	Gly	Pro	Arg	Asn	His	His	Leu	Phe	Ala	Ser	Arg	His	His
150					245				250					255		
152	Thr	Gly	Arg	Gly	Leu	Pro	Ser	Leu	Ser	Ala	Tyr	Ala	Ile	Ser	His	Ser
153			260			265				270						
155	Met	Ser	Arg	Ser	His	Phe	His	Glu	Asp	Glu	Asp	Gly	Tyr	Thr	His	Arg
156			275			280				285						
158	Val	Lys	Arg	Ser	Arg	Pro	Asn	Ser	Pro	Asn	Ser	Thr	Ala	Pro	Ser	Ser
159		290				295				300						
161	Pro	Thr	Phe	Ser	His	Asp	Ser	Leu	Ser	Pro	Thr	Pro	Asp	His	Thr	Pro
162		305				310				315					320	
164	Leu	Ala	Thr	Pro	Ala	His	Ser	Pro	Arg	Leu	Arg	Ser	Leu	Gly	Ser	Ser
165					325				330					335		
167	Glu	Leu	His	Leu	Pro	Ser	Ile	Arg	His	Leu	Ser	Leu	His	His	Thr	Pro
168			340			345				350						
170	Ala	Leu	Ala	Pro	Met	Glu	Pro	Gln	Pro	Glu	Gly	Pro	Asn	Tyr	Tyr	Ser
171			355			360				365						
173	Pro	Ser	Gln	Ser	His	Gly	Pro	Thr	Ile	Ser	Asp	Ile	Met	Ser	Arg	Pro
174			370			375				380						
176	Asp	Gly	Thr	Gln	Arg	Lys	Leu	Pro	Val	Pro	Gln	Val	Pro	Lys	Val	Ala
177		385				390				395					400	

RAW SEQUENCE LISTING
PATENT APPLICATION: US/09/936,367

DATE: 12/11/2003
TIME: 11:13:11

Input Set : A:\PTO.AMC.txt
Output Set: N:\CRF4\12082003\I936367.raw

179 Val Gln Asp Met Leu Asn Pro Ser Ala Gly Phe Ser Ser Val Ser Ser
180 405 410 415
182 Ser Thr Asn Asn Ser Val Ala Gly Asn Asp Leu Ala Glu Arg Phe
183 420 425 430

VERIFICATION SUMMARY

PATENT APPLICATION: US/09/936,367

DATE: 12/11/2003

TIME: 11:13:12

Input Set : A:\PTO.AMC.txt

Output Set: N:\CRF4\12082003\I936367.raw

L:1 M:259 W: Allowed number of lines exceeded, (1) GENERAL INFORMATION:

L:9 M:270 C: Current Application Number differs, Replaced Application Number

L:10 M:271 C: Current Filing Date differs, Replaced Current Filing Date